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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture
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Held at the Palais Wilson, Geneva, on Thursday, 6 May 2014, at 3 p.m.

Chairperson: Mr. Grossman

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* Reissued for technical reasons on 22 May 2014.

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Initial report of the Holy See (continued) (CAT/C/VAT/1)

1. *At the invitation of the Chairperson, the delegation of the Holy See took places at the Committee table.*

2. **Monsignor Tomasi** (Holy See) said that the State party had submitted its initial report late because it had needed time to study the implications of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the Holy See and to reform its Criminal Code accordingly. The report had been submitted when the reform process was nearing completion. The Holy See was a sovereign subject of international law, independent of any authority or jurisdiction, which exercised its sovereignty over the territory of the Vatican City State. That sovereignty had been recognized internationally since the implementation of the Lateran Treaty in 1929. The primary function of the Vatican City State was to ensure the absolute freedom and independence of the Holy See. The Holy See (the Pope) was an elected monarch who entered treaties as the central organ of the government of the Catholic Church, such as concordats made with States in order to guarantee the freedom of the Church in those countries, and as sovereign of the Vatican City State, in pursuit of the domestic interests of the territory itself. There was no specific reference to any special jurisdiction for the clergy in the 1984 concordat between the Holy See and Italy. The 1933 concordat with Austria could be amended only by request of both States parties. No cleric had requested consideration under article 20 of the concordat in the previous five years.

3. The Convention had been signed for the territory of the Vatican City State. No other State party had objected to the Interpretative Declaration made by the Holy See upon its accession to the Convention. It had been the understanding of the Holy See that it would be bound by the terms of the Convention as interpreted by the Vienna Convention on the Law of Treaties, and that its obligations thereunder could be modified only by an additional protocol or amendments expressly accepted by States parties. Under canon law, agreements made by the Holy See with other States or international subjects took precedence over Vatican City State domestic law. In 2013, the definition of torture contained in the Convention had been incorporated by means of an Apostolic Letter into the Criminal Code of the Vatican City State, which was calqued on the Italian Criminal Code. Article 16 of the Convention had also been incorporated into the Criminal Code.

4. Crimes committed in the territory of the Vatican City State could be investigated and their perpetrators prosecuted by the authorities of the territory. Under the Lateran Treaty, the Vatican City State could request the assistance of Italy to provide for the punishment of crimes committed within the State, unless the perpetrator had taken refuge in Italian territory, in which case he or she would be prosecuted by the Italian authorities. Complaints about crimes were registered with the Prosecutor and Judge of the Vatican City State. Measures were in place to ensure that the alleged offender was treated fairly at all stages of criminal proceedings. Goods confiscated following a conviction could be used to compensate victims. No complaints of torture had been filed to date under the amended Criminal Code. Asylum seekers filed their applications with the Italian authorities.

5. New regulations on the treatment of prisoners were being introduced for a two-year trial period. Interpreters were provided for detainees who did not speak Italian. Facilities were arranged to suit the hygiene and dietary needs of detainees in accordance with a wide range of religious practices. Religious instruction and pastoral care were provided to all detainees, regardless of their religion. The Catholic Church, at a local level, provided

trained chaplains to serve the spiritual needs of prisoners. They also acted as advocates against torture and ill-treatment.

6. Members of the Gendarmerie Corps, the Pontifical Swiss Guard and medical practitioners in the Vatican City State received training based on the rules of the Italian penitentiary system. Gendarmerie Corps officers also received training in human rights, international humanitarian law and the principles of international criminal justice. Similar training was being introduced for the Swiss Guards. Training courses including reference to the Istanbul Protocol were being developed for medical practitioners. Students at the Pontifical Academy, where diplomats for the Holy See were trained, received human rights tuition.

7. Replying to questions by Committee members regarding cases of the sexual abuse of children by clerics, which presumably fell under the Convention, he said that he assumed the Committee, given the universal prevalence of such crimes, had shown equal interest in the matter when considering the periodic reports of other States parties. Domestic law contained provisions relating to a broad range of crimes against children. For the purposes of crimes against children, public officials were deemed to include: members and staff of the Roman Curia and related institutions, papal legates and diplomatic personnel of the Holy See, representatives and managers of entities dependent on the Holy See, and any person holding an administrative or judicial mandate in the Holy See. There was no statute of limitations on crimes against children.

8. The Pope, as supreme spiritual head of the Catholic Church, encouraged good practices adapted to pastoral needs throughout the world. However, if the Holy See were to apply the Convention to every Catholic in every nation, it would stand in conflict with international law and the sovereignty of other States. Clerics fell under the legal jurisdiction of the countries in which they resided. The recently established Pontifical Commission for the Protection of Minors had held its first meeting in early May 2014, at the conclusion of which its members had affirmed their commitment to accountability in the Church. As an advisory committee to the Pope, it would propose further initiatives to encourage local responsibility around the world and mutual sharing of best practices for the protection of minors, including training and education programmes and responses to abuse. Specific proposals would be made to raise awareness of the devastating consequences of the failure to report suspected cases of abuse and to support victims and their families. The Commission aimed to establish protocols to deal with situations where senior Church officials failed to fulfil their obligations to protect children.

9. The Congregation for the Doctrine of the Faith was investigating cases of sexual misconduct involving Cardinal Keith O'Brien and Archbishop Wesolowski. The latter, as a diplomatic agent of the Holy See, was also being investigated by the Tribunal of the Vatican City State. If the allegations were found to be credible, the cases would be adjudicated in accordance with the law.

10. The Holy See considered the right to life to be non-negotiable and, as directed by the Convention itself, condemned torture, including for those who were tortured and killed before they were born. In Canada and the United Kingdom, hundreds of babies born alive after failed abortion procedures had been left to die since 2000. Such cruel methods of late abortion, especially "dilation and evacuation" techniques, amounted to torture. Abortion was not a dimension of reproductive health services. Furthermore, attempts to dictate to the Holy See that it must change its convictions, laws and teachings constituted a direct violation of the freedom of opinion and belief. The Holy See did not impose its code on others.

11. The Holy See made every effort to conduct ecclesiastical proceedings in the case of clerics against whom credible accusations of sexual abuse of minors had been made in

territories outside the Vatican City State, without prejudice to proceedings that might be launched in the State in which the person was resident. In such cases, the Congregation for the Doctrine of the Faith applied the Motu Proprio *Sacramentorum sanctitatis tutela* in conjunction with the 1983 Code of Canon Law. Where allegations appeared to be well founded, the local bishop forwarded all necessary information to the Congregation and expressed his opinion on measures to be taken. The bishop could act to protect children by restricting the activities of any priest in his diocese before, during and after any canonical proceeding. The Congregation could authorize the local bishop to conduct a judicial penal trial or an administrative penal trial. Appeals against the outcome of such trials could be lodged with a tribunal of the Congregation. The ruling by Cardinals who were members of the Congregation was final.

12. Where priests admitted their guilt, the bishop was authorized to issue a decree prohibiting or restricting their public ministry, against which priests could appeal before the Congregation. The most severe penalty was dismissal. In especially serious cases, the Congregation could request that the Pope issue a decree of "ex officio" dismissal from the clerical state, against which there was no canonical remedy. Accused priests who admitted their guilt could request leave to return to the lay state. Since 2004, more than 3,400 credible allegations of sexual abuse of minors had been referred to the Congregation for the Doctrine of the Faith. They referred largely to cases dating back as far as the 1950s. As a result, 848 clerics had been dismissed and other disciplinary measures had been applied in more than 2,500 other cases.

13. The Holy See, through the Pontifical Commission for the Protection of Minors and programmes being implemented by national bishops' conferences, was committed to assisting other States parties in fulfilling their obligations under the Convention. Clerical and lay staff of Catholic hospitals, schools, orphanages and other institutions were subject to the jurisdiction of those States.

14. The Catholic bishops of the United States of America had contracted two independent studies into sexual abuse of minors by Catholic priests during the period from 1950 to 2010. The first of those studies, Nature and Scope, had focused on a description of the problem and its extent, while the second, Causes and Context, had sought to understand the reasons behind the phenomenon. In the period studied, it was found that 4 per cent of priests had been accused of engaging in sexual abuse of minors. A total of 10,667 cases of sexual abuse of minors by priests had been reported to dioceses by early 2003. No single cause of the phenomenon had been identified but social changes in the 1960s and 1970s had led to an increase in deviant behaviour in society at large and also among priests. Organizational, psychological and situational factors had contributed to the vulnerability of individual priests in that period. On the other hand, factors specific to the Catholic Church had contributed to a decline in the incidence of such cases in the mid-1980s. Priests who had abused minors had been found not to be, in terms of their developmental histories and psychological characteristics, statistically distinguishable from other priests.

15. In June 2002 the United States Conference of Catholic Bishops had established the Charter for the Protection of Children and Young People, a comprehensive set of procedures for addressing allegations of sexual abuse of minors by Catholic clergy. The Charter included guidelines for reconciliation, healing, accountability and prevention of further acts of abuse. Acts that had occurred before the Charter's implementation and were now brought forward would be considered subject to the Charter. Annual reports on its implementation, which drew on information from audits of all dioceses and eparchies in the United States, were prepared by the Secretariat of Child and Youth Protection.

16. Also in June 2002 the Conference had established the National Review Board, whose functions included, among others, advising the Committee for the Protection of Children and Young People on policies and practices and on the annual audit process;

reviewing the work of the Secretariat of Child and Youth Protection; consulting with the Conference president, the Committee for the Protection of Children and Young People, the Administrative Committee and other relevant Catholic Church entities on matters relating to the protection of minors from sexual abuse; and making appropriate recommendations to prevent such abuse. Since 1950, dioceses and religious orders had spent approximately $2.5 billion on settlements to victims/survivors and $78 million on therapy for them, and approximately $47 million on other costs related to the sexual abuse crisis.

17. The second example of a constructive response to the crisis by ecclesiastical authorities was the work of the National Committee for Professional Standards, a joint committee of the Australian Catholic Bishops Conference and Catholic Religious Australia. The National Committee had recently overseen the revision of conduct guidelines for clergy, lay workers and volunteers in the Catholic Church of Australia, as well as a document setting out the principles that formed the basis of the Church's response to complaints of abuse and the procedures to be followed in responding to individual complaints.

18. Regarding individual cases and other questions that would be more relevant to the Convention on the Rights of the Child, he referred the Committee to the replies provided by the Holy See during the recent review of its second periodic report to that Committee, and to its forthcoming response to the concluding observations issued by the Committee on the Rights of the Child.

19. **Ms. Gaer**, referring to the assertion by the Holy See that it could not be held responsible for compliance with the Convention outside the Vatican City State, said that, as the Holy See was a Permanent Observer to the United Nations and exercised diplomatic functions, to refrain from considering the actions of its officials and those for whom it had secured privileges through its diplomatic relations would be to create gaps in the coverage of the Convention.

20. Looking through the documentation provided by the delegation, she was confused by the fact that, while Holy See officials were considered officials of the Vatican City State for purposes of criminal law, article 3 of Law No. VIII on supplementary norms on criminal law matters, on torture, referred solely to "the public official having judicial, judicial police or law enforcement functions". Did the provisions on torture apply to all officials? Article 8 of Law VIII criminalized sexual acts with children. Was the Holy See of the view that, under that article, perpetrators of such acts could be charged with having inflicted torture?

21. Regarding the extent of the Holy See's effective control over Catholic Church activities occurring outside the Vatican City State, the Committee was persuaded that the Holy See exercised such significant control and was in a position to, among other things, compel perpetrators of acts of sexual abuse to cease committing them; order bishops to monitor the conduct of clerics reporting to them; and transfer, or prevent the transfer of, accused persons outside the jurisdictions in which the acts had occurred. Recalling the direct obligations of Vatican City State officials, including Holy See officials, under the Convention, and in particular their extraterritorial obligations, she asked whether the Holy See believed that it was doing everything possible to fulfil those obligations. If, as the delegation had stated in its responses, there had been no accusations of torture under Law No. VIII, did that mean that no charges had been filed against Archbishop Josef Wesolowski? If not, why not?

22. While the Holy See had asserted that it did not force any individual to adhere to its stance on abortion, the Committee had heard from NGOs and other sources about cases in which Holy See officials had called for blanket criminalization of abortion by other Governments, including in cases of rape, incest and endangerment of the mother's life. She asked the delegation to comment on such cases.

23. In its responses the delegation had stated that 884 clerics had been dismissed for having committed grave crimes and 2,572 had been subjected to lesser penalties. In how many of those cases had officials of the Holy See, the Vatican City State or the relevant diocese referred information about the cases to civil authorities, either voluntarily or at the latter's request? In how many cases had they not done so? How many of those subjected to lesser penalties had continued working as priests?

24. She asked the delegation to clarify the role of Holy See and Vatican City State officials in monitoring priests who had been transferred to other posts after having been found to have committed abuses. The Committee's jurisprudence on the question of whether sexual abuse constituted torture was consistent with that of a number of other courts that had found that rape and sexual abuse did constitute torture. Rulings to that effect had been made, for example, by the Inter-American Court of Human Rights, the European Court of Human Rights and the international criminal tribunals for the former Yugoslavia and Rwanda. If the delegation was not familiar with the relevant jurisprudence, the Committee would be glad to provide documentation.

25. She recalled that, under article 5 of the Convention, even if acts of torture or other ill-treatment were perpetrated in territory outside its jurisdiction, the Holy See was obligated to establish its jurisdiction over the offences if the conditions listed in article 5 were met. She asked whether the Holy See recognized its potential liability for extraterritorial offences in the case of Archbishop Wesolowski. Its comments on that topic to date had been contradictory.

26. Regarding judicial cooperation, the Committee had received information about cases in which priests had not cooperated with requests for information, and other cases in which Holy See officials had claimed diplomatic immunity when faced with requests for information. She asked the delegation to elaborate on cases in which the Holy See was cooperating with requests for information and those in which it was not, and to state why it did not cooperate in all cases. Listing particular ongoing cases, she asked how the Holy See was fulfilling its due diligence obligations in such instances.

27. **Mr. Tugushi** (Country Rapporteur) asked whether the Pontifical Commission for the Protection of Minors would focus on past cases or also work to prevent future cases. Would the new protocols being implemented prevent impunity and ensure that reporting was compulsory? Recalling cases of pregnant 9-year-old girls in Latin America being publicly humiliated by Catholic Church officials because they sought abortions, he said that such ill-treatment was especially damaging for women and girls seeking abortions after having been subjected to sexual violence, as the resulting double stigmatization made them all the more vulnerable to subsequent ill-treatment.

28. He asked whether, in the view of the Holy See, the common practice of referring cases back to the dioceses in which the complaints had originated could jeopardize impartial consideration of such cases.

29. **Mr. Modvig**, noting that the Holy See had provided information about the total cost of the treatment and compensation provided to sexual abuse victims in the United States and Australia, asked what had been the average amount of treatment and compensation provided to each victim, and whether there had been any attempt to determine whether that amount represented adequate redress for individual victims.

30. **Mr. Zhang** said that, having heard the various replies of the Holy See, he still had the impression, from reading paragraph 7 (d) of the Holy See's report, that the Holy See viewed canon law as superseding international law. He requested clarification of the matter.

31. **Ms. Belmir** emphasized that, in the Committee's view, acts of sexual abuse were crimes and constituted attacks on a victim's moral and physical integrity and personal dignity. She asked whether the Holy See would take action to put an end to such practices.

32. **The Chairperson** said that he welcomed the creation of the Pontifical Commission for the Protection of Minors and the recognition by the Holy See that addressing violence against children required a comprehensive approach. Referring to a question about the Committee's focus and drawing attention to article 1 of the Convention, he said that violence, including sexual abuse, against children was pervasive around the world and in all aspects of daily life. The plight of children was an issue that should unite all those participating in the dialogue at hand. Nonetheless, if the Holy See believed that the Committee was applying double standards, it should say so. The Committee's legitimacy depended on its being perceived as fair and impartial.

33. **Monsignor Tomasi** (Holy See) said, with regard to the question of the legislation to which Vatican officials were subject, that the Apostolic Letter of Pope Francis should be read in conjunction with Law No. VIII: Supplementary norms on criminal law matters, adopted by the Holy See in 2013. Vatican officials were subject to that law.

34. **Monsignor El-Kassis** (Holy See) confirmed that Vatican officials must abide by Law No. VIII, even if they were not members of the church. However, under article 22 of the Lateran Treaty, Italian law applied to acts committed outside Vatican territory.

35. **Monsignor Tomasi** (Holy See) said that, as the Committee had pointed out in its general comment No. 2, the sexual abuse of children could be considered torture. The Convention applied to all officials, who were punishable under the Criminal Code of the Vatican. As for the power of Vatican officials outside the Vatican City State, he emphasized the distinction between the legal capacity to impose a decision abroad — which would clearly not be acceptable to any foreign State — and the power to carry out instructions. The former Papal Nuncio, Archbishop Wesolowski, would be prosecuted in the Vatican itself, because he was a citizen of the Vatican City State. If found guilty, he would be punished accordingly. The delay was due to the fact that some documentation had not been sent to the Vatican from the Dominican Republic. The 848 clerics expelled from active ministry had been laicized: they had no formal relationship with their bishop or former superior. He did not know how many clerics had been directly referred to the civil authorities. Other clerics had not been laicized but had been asked to live in a monastery or a private place in order to ensure that they had no more contact with children.

36. The policy of transferring priests from one parish to another had been in place decades ago. In the 1960s or 1970s, difficult cases used to be sent to a psychiatrist and, if that psychiatrist said that an offender could go back to work, the offender was transferred. It had, of course, been a mistake; the culture had changed. The work done by the Catholic Church over the past 10 years, on the contrary, represented a model that other organizations could follow. He did not know the statistics of the number of offenders referred by the ecclesiastical authorities to the civil courts, but, whenever a credible accusation of sexual abuse of a minor was made, the cleric concerned was reported to the civil authorities of the State of which the cleric was a citizen. With regard to the place of detention in the Vatican, there were three cells available for men or women, but, although they had existed since the conclusion of the Lateran Treaty in 1929, they had been used for the first time in 2012.

37. **Monsignor El-Kassis** (Holy See) said, with regard to the case of Paolo Gabriele, that two experts had been appointed to look into complaints that the cell was too small. The experts had found that, at 7 m^2, the cell was large enough and it had a window. The conditions were in line with standards in Italy. As for the assertion that Mr. Gabriele's eyes had been affected by his detention, an ophthalmologist had said that his eyesight was normal for a man who habitually wore spectacles.

38. **Monsignor Tomasi** (Holy See) said, with reference to the special cases of the two pregnant girls mentioned earlier, that it was his understanding that the people who had objected to those girls having abortions were not Vatican officials but rather the local bishop and members of the local church. The Roman Catholic Church tried to be sensitive to the problems of women and to respect their physical needs, especially in pregnancy. The cases in Nicaragua and Brazil had been exceptional and should be judged as such. With regard to compensation, he was not able to tell the Committee the average amount paid. Some settlements had been made out of court. Serious efforts were made, however, to provide not just financial compensation but support that would enable people to lead a normal life. With regard to the question about the relationship between international and domestic law, he said that, under canon 3 of canon law, international law prevailed.

39. **Ms. Belmir** asked the delegation to confirm that sexual abuse amounted to a major rather than a minor offence. She also sought an assurance that, where such an offence occurred, the victim could obtain not only the conviction of the perpetrator but also reparation and rehabilitation. Lastly, she asked why, when children were taken away for adoption, they were deprived of knowledge of their parents. A person was entitled to know his or her own identity.

40. **Monsignor Tomasi** (Holy See) said that the Holy See accepted the decision of the court in the country where the case was tried as to whether an offence was major or minor. As for the third question, he wished to reiterate that the emphasis had changed and the policy of taking children of clerics or others away from their mothers had been the reflection of the culture of the time. The Holy See no longer followed that policy. The matter had been discussed with the Committee on the Rights of the Child.

41. **Monsignor El-Kassis** (Holy See) said, with regard to a question about the Holy See's position on war crimes, that Vatican law made no distinction between crimes against humanity and war crimes.

42. **Monsignor Tomasi** (Holy See) said, with regard to a point raised by Mr. Tugushi, that there was no climate of impunity in either the Vatican or local churches, but, on the contrary, a total commitment to preventing a repetition of the abuses of the past.

43. In response to Ms. Gaer's question, he said that the reason that the Papal Nuncio in Australia had not responded to the request for judicial cooperation was that the request had not gone through the proper diplomatic channels, as from one State to another. With regard to the sudden increase in the number of clerics punished but not defrocked, that was due to prudential decisions taken either by a local bishop or by the Congregation for the Doctrine of the Faith. Whether defrocked or not, such clerics were removed from contact with their victims or with children generally.

44. The question about the nuns that had run the Magdalene laundries had been discussed with the Committee on the Rights of the Child. For information, the nuns had paid compensation of US$ 240 million, but the Irish Government had mismanaged the funds and had requested more, which the nuns had refused. With regard to the monitoring of priests while their case was under investigation, the principle was that, if there was a serious allegation of sexual abuse, and the case was heard by the Congregation for the Doctrine of the Faith or a diocesan court, the priest concerned was immediately suspended, whether guilty or not. It might seem harsh, but it was better to err on the side of safety.

45. With regard to the application of the Convention, he said that the Holy See had carried out its part as a State party to the Convention and had made every effort to address the plague of sexual abuse worldwide. Indeed, its success in providing spiritual assistance was such that it could usefully be imitated by other bodies.

The meeting rose at 5.55 p.m.